

**Office of
The City Attorney
City of San Diego**

MEMORANDUM

533-5800

DATE: September 21, 2007

TO: Honorable Mayor and City Council

FROM: City Attorney

SUBJECT: Declaration of a Water Shortage Emergency

According to scientists at the U.S. Geological Survey, the drought currently gripping the West could be the biggest in 500 years, worse even than during the Dust Bowl Years. The Colorado River is at its lowest point on record. About 90% of the water used in San Diego County is imported from other areas of the State.

On August 31, in litigation known as *Natural Resources Defense Council v. Kempthorne*, District Court Judge Wanger announced severe restrictions on the operation of the massive pumps that send water from the Delta to Southern California in order to protect a fish called the Delta Smelt. These restrictions could take effect as soon as this Christmas. About one-third of the water used in San Diego County comes from the Delta.

In light of the historic dry conditions and the impending restrictions on drawing water from the Delta, water supply shortages are probable. While it may take some time for the Metropolitan Water District and the County Water Authority to determine what the actual impact and restrictions will be for the City of San Diego, the City Attorney recommends the City declare a water shortage emergency and implementation of mandatory Stage 2 conservation measures. The City of Long Beach implemented mandatory water conservation measures on September 13, 2007.

Stage 2, known as "Water Alert," is one of four levels of conservation set forth in the Municipal Code. Stage 1 is the least severe, asking only for voluntary conservation measures. Stage 4 is the most severe. Stage 2 is triggered "when the *probability* exists that the City of San Diego Water Utilities Department will not be able to meet all of the water demands of its customers." SDMC § 67.3806(c) (emphasis added). Stage 2 requires mandatory conservation of potable water as follows:

(1) Lawn watering and landscape irrigation, including construction meter irrigation, is permitted only during designated hours on designated days. Watering is permitted at any time if:

- (A) a hand-held hose equipped with a positive shut-off nozzle is used, or
- (B) a hand-held container is used, or
- (C) a drip irrigation system is used.

Commercial nurseries, commercial sod farms and similarly situated establishments are exempt from irrigation restrictions but will be required to curtail all nonessential water use.

(2) The washing of automobiles, trucks, trailers, boats, airplanes and other types of mobile equipment, is permitted at any time with a hand-held bucket or a hand-held hose equipped with a positive shut-off nozzle for quick rinses. Washing may be done at any time on the immediate premises of a commercial car wash or commercial service station, or by a mobile car wash or on-site car wash using high pressure washing equipment. Further, such washings are exempted from these regulations where the health, safety and welfare of the public is contingent upon frequent vehicle cleanings, such as garbage trucks and vehicles to transport food and perishables.

(3) The overfilling of swimming pools, spas, ponds and artificial lakes is prohibited.

(4) Irrigation of golf courses, parks, school grounds and recreation fields is permitted only during designated hours on designated days.

(5) Use of water from fire hydrants shall be limited to fire fighting, related activities or other activities necessary to maintain the health, safety and welfare of the citizens of San Diego.

(6) All restaurants are prohibited from serving water to their customers except when specifically requested by the customers.

(7) Water shall not be used to wash down sidewalks, driveways, parking areas, tennis courts, patios or other paved areas, except to alleviate immediate fire or sanitation hazards.

(8) Ornamental fountains may operate if they recirculate water. Ornamental fountains that do not recycle water are prohibited.

(9) Construction operations receiving water from a construction meter or water truck shall not use water unnecessarily for any purposes other than those required by regulatory agencies. Construction projects requiring watering for new landscaping materials should adhere to the designated irrigation hours associated with subsection (1).

The City must hold a public hearing prior to declaring a water shortage emergency, unless there is an event damaging the water system that creates an immediate emergency. Water Code § 351;

SDMC § 67.3804(b); City Attorney MOL dated August 14, 1979. Notice of the time and place of the hearing must be published in the City's official newspaper at least seven days prior to the hearing. Water Code § 352. Implementation of conservation measures beyond Stage 1 also requires public announcement and publication in the City's official newspaper for three consecutive days after adoption. SDMC § 67.3807.

There is a sufficient basis to declare a water shortage emergency and implement Stage 2 conservation measures. A water shortage emergency may be declared for threatened shortages that have yet to occur. *San Diego County Water Authority v. Metropolitan Water District of Southern California*, 117 Cal. App. 4th 13 (2004). Judge Wanger's ruling in *Natural Resources Defense Council v. Kempthorne* severely restricts the operation of pumps that send water from the State Water Project to Southern California, upon which San Diego County relies on for about a third of its water. Though Judge Wanger's ruling regarding the Delta Smelt and the State Water Project may not yet be final or implemented, the threat his ruling poses to the City's water supply, in combination with the current drought conditions, is enough to declare a water shortage emergency. The City's 2005 Urban Water Management Plan suggests a threshold of a 10% water supply shortage for Stage 2 conservation measures; a threshold we understand will likely be met.

The City Attorney recommends the City Council immediately docket an action to declare a water shortage emergency and implement mandatory Stage 2 conservation measures. The declaration of a water shortage emergency may be done by resolution, as has been done in the past. *See* Resolution No. R-276361. The resolution is subject to the Mayor's veto power.